

107TH CONGRESS
2D SESSION

S. 2659

To amend the Foreign Intelligence Surveillance Act of 1978 to modify the standard of proof for issuance of orders regarding non-United States persons from probable cause to reasonable suspicion.

IN THE SENATE OF THE UNITED STATES

JUNE 20, 2002

Mr. DEWINE introduced the following bill; which was read twice and referred to the Select Committee on Intelligence.

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to modify the standard of proof for issuance of orders regarding non-United States persons from probable cause to reasonable suspicion.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. MODIFICATION OF BURDEN OF PROOF FOR**
2 **ISSUANCE OF ORDERS ON NON-UNITED**
3 **STATES PERSONS UNDER FOREIGN INTEL-**
4 **LIGENCE SURVEILLANCE ACT OF 1978.**

5 (a) ORDERS OF ELECTRONIC SURVEILLANCE.—Sec-
6 tion 105 of the Foreign Intelligence Surveillance Act of
7 1978 (50 U.S.C. 1805) is amended—

8 (1) in subsection (a), by striking paragraph (3)
9 and inserting the following new paragraph (3):

10 “(3) on the basis of facts submitted by the
11 applicant—

12 “(A) in the case of a target of electronic
13 surveillance that is a United States person,
14 there is probable cause to believe that—

15 “(i) the target is a foreign power or
16 an agent of a foreign power, provided that
17 no United States person may be considered
18 a foreign power or an agent of a foreign
19 power solely upon the basis of activities
20 protected by the first amendment to the
21 Constitution of the United States; and

22 “(ii) each of the facilities or places at
23 which the electronic surveillance is directed
24 is being used, or is about to be used, by a
25 foreign power or an agent of a foreign
26 power; or

1 “(B) in the case of a target of electronic
 2 surveillance that is a non-United States person,
 3 there is reasonable suspicion to believe that—

4 “(i) the target is a foreign power or
 5 an agent of a foreign power; and

6 “(ii) each of the facilities or places at
 7 which the electronic surveillance is directed
 8 is being used, or is about to be used, by a
 9 foreign power or an agent of a foreign
 10 power;”;

11 (2) in subsection (b), by inserting “or reason-
 12 able suspicion” after “probable cause”; and

13 (3) in subsection (e)(2), by inserting “, or rea-
 14 sonable suspicion in the case of a non-United States
 15 person,” after “probable cause”.

16 (b) PHYSICAL SEARCHES.—Section 304 of that Act
 17 (50 U.S.C. 1824) is amended—

18 (1) by striking paragraph (3) and inserting the
 19 following new paragraph (3):

20 “(3) on the basis of facts submitted by the
 21 applicant—

22 “(A) in the case of a target of a physical
 23 search that is a United States person, there is
 24 probable cause to believe that—

1 “(i) the target is a foreign power or
2 an agent of a foreign power, except that no
3 United States person may be considered a
4 foreign power or an agent of a foreign
5 power solely upon the basis of activities
6 protected by the first amendment to the
7 Constitution of the United States; and

8 “(ii) the premises or property to be
9 searched is owned, used, possessed by, or
10 is in transit to or from an agent of a for-
11 eign power or foreign power; or

12 “(B) in the case of a target of a physical
13 search that is a non-United States person, there
14 is reasonable suspicion to believe that—

15 “(i) the target is a foreign power or
16 an agent of a foreign power; and

17 “(ii) the premises or property to be
18 searched is owned, used, possessed by, or
19 is in transit to or from an agent of a for-
20 eign power or foreign power;”;

21 (2) in subsection (b), by inserting “or reason-
22 able suspicion” after “probable cause”; and

- 1 (3) in subsection (d)(2), by inserting “, or rea-
- 2 sonable suspicion in the case of a non-United States
- 3 person,” after “probable cause”.

